

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 SECURITYSCORECARD, INC.,

4 Plaintiff,

5 v.

24 Civ. 4240 (ER)

6 SAFE SECURITIES, INC.,
7 d/b/a SAFE SECURITY
and MARY POLYAKOVA,

8 Defendants.

Preliminary Injunction Hearing

9 -----x

New York, N.Y.

June 13, 2024

2:30 p.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge

14 APPEARANCES

15 PILLSBURY WINTHROP SHAW PITTMAN LLP

16 Attorneys for Plaintiff

17 BY: KENNETH W. TABER

BRIAN L. BECKERMAN

18 SARAH M. MADIGAN

19 GOODWIN PROCTER LLP

Attorneys for Defendants

20 BY: JOHN P. PADRO

TIMOTHY KEEGAN

21 KUDMAN TRACHTEN ALOE POSNER LLP

Attorneys for Defendant Mary Polyakova

22 BY: MITCHELL E. EPNER

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. TABER: Good afternoon, your Honor.

Ken Taber of Pillsbury Winthrop Shaw Pittman LLP, for plaintiff, SecurityScorecard.

With me are my colleagues Brian Beckerman and Sarah Madigan, and a representative from our client, Steve Cobb.

MR. PADRO: Good morning -- good afternoon, your Honor. John Padro from the firm Goodwin Procter, on behalf of defendant SAFE Securities.

With me are my colleagues Tim Keegan here to the right, and I have my colleague in the gallery, Ms. Dena Kia.

MR. EPNER: Good afternoon, your Honor.

Mitchell Epner, Kudman Trachten Aloe Posner, for defendant Mary Polyakova.

THE COURT: Good afternoon to you all.

This matter is on for a hearing on plaintiff's request for a preliminary injunction. I believe I've received all the papers. I think the last thing that came over the transom was the supplemental affidavit of Mr. Lee; is that correct?

MR. TABER: Your Honor, I'm not sure if that preceded or the document that we sent which was a revised proposed order. That came late this morning.

THE COURT: I don't know that I have that.

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1 MR. TABER: I have a copy, if your Honor would like.

2 THE COURT: Please.

3 Okay. So since there has been some movement in the
4 way things played out, Mr. Taber, why don't you tell me where
5 we are from your perspective.

6 MR. TABER: Sure. Thank you, your Honor.

7 THE COURT: You can remain seated, sir. Just bring
8 the microphone close to you.

9 MR. TABER: Okay.

10 Your Honor, we see three things at issue before you
11 today that necessitate the entry of a preliminary injunction.

12 The first is that Ms. Polyakova took from our client –
13 and does not deny taking from our client – a list that
14 contained 500 client names and extensive details on each of
15 those 500 clients. That same list contained approximately
16 8,000 prospect names. And then there are two additional lists
17 that are what we refer to as the CISO list, which are lists of
18 chief information security officers that were to be invited to
19 an event. There are 200 of those individuals listed there.

20 And then the final thing that we see at issue is the
21 improper and unlawful, we submit, access to our customer-only
22 platform by defendant SAFE.

23 That's what's before the Court.

24 THE COURT: I'm sorry. But that's a very different
25 type of conduct; correct?

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1 MR. TABER: Correct. Different in every aspect, I
2 would say.

3 THE COURT: Okay.

4 MR. TABER: But, nonetheless, something that by
5 injunction we're asking the Court to put an end to, so that
6 there are no further surreptitious efforts by the defendant
7 SAFE to get onto our platform, pretending to be a customer, and
8 gain access to all of the customer-only information that's on
9 there. So that's also part of our injunctive relief request.
10 But it is, as your Honor points out, quite different from the
11 customer and prospect names.

12 The defendant here SAFE is a relatively new company
13 which has a grand total of 100 clients, as compared with our
14 roughly 2,000 clients. And so we submit, your Honor, that the
15 information that Ms. Polyakova took and that she has – although
16 it's now in the hands, we are told, of a vendor that they've
17 retained – would be a treasure trove of invaluable information
18 for this fledgling new company SAFE to be able to come to
19 market and know who are the buyers of these kinds of services,
20 when their contracts run out, what their contract volumes are.
21 It's a virtual roadmap for success for them and, frankly, they
22 don't deserve it.

23 THE COURT: Can you tell me in a nutshell what
24 SecurityScorecard does.

25 MR. TABER: Sure.

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1 It's essentially, your Honor, two businesses, both of
2 which relate directly to the field of cybersecurity.

3 The first business is they create ratings based on
4 billions of hits every day on the internet as to the
5 cybersecurity of each company that they monitor. And they
6 monitor thousands, if not tens of thousands, of companies. And
7 that information is very valuable if you are engaged in
8 business and want to deal with a vendor, want to know am I safe
9 in sharing data with that vendor, do they have safe practices,
10 and are they the subject, for example, of leaks of information
11 on the dark web. So customers pay a lot of money for those
12 security ratings.

13 And then what they do is they buy what are called
14 slots. Each slot allows them to review the security of another
15 company as collected in this proprietary database.

16 THE COURT: I'm sorry.

17 MR. TABER: Sure.

18 THE COURT: So as I understand it, SecurityScorecard
19 monitors the websites or the digital exposure of companies that
20 are not even their clients.

21 MR. TABER: Correct.

22 THE COURT: You said tens of thousands.

23 MR. TABER: Way more. I suspect I'm actually low on
24 that, your Honor. As I said those words, I'm thinking it's
25 probably more like hundreds of thousands. And I'm asking

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1 Mr. Cobb.

2 MR. COBB: Twelve million-plus.

3 THE COURT: Twelve million companies?

4 MR. COBB: Twelve million-plus, yes, your Honor.

5 THE COURT: There are 12 million companies in the
6 U.S.?

7 MR. TABER: Worldwide.

8 THE COURT: Worldwide.

9 And when you buy a slot, you buy to see information
10 about other companies and not about yourself?

11 MR. TABER: Correct.

12 THE COURT: Why?

13 MR. TABER: Why? Because if you're about to deal with
14 somebody as a vendor -- many of the security breaches that we
15 read about, the cybersecurity attacks, involve people who come
16 in through one company and garner the data of other companies.

17 For example, there was, in the healthcare world, a
18 subsidiary of UnitedHealthcare was hacked. And the hacking of
19 that data actually affected healthcare institutions all around
20 the world because everybody traded data into them. So before
21 you give your data into another company, you want to know, is
22 that other company secure; where do they stand in terms of
23 their cybersecurity protections. And one of the ways to
24 evaluate that is to buy a slot on the SecurityScorecard
25 network.

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1 And you can monitor on a daily, hourly, or
2 minute-by-minute, if you choose, basis how secure that entity
3 is that you're about to do business with or that you're
4 continuing to do business with. You can monitor whether they
5 themselves are having breaches that are known on the internet
6 and that are resulting in their data being available for
7 purchase on the dark web, for example.

8 THE COURT: So a slot gives you insight into a
9 particular company --

10 MR. TABER: Correct.

11 THE COURT: -- not all 12 million.

12 MR. TABER: Correct.

13 THE COURT: Okay.

14 MR. TABER: One slot.

15 So you, as a company officer charged with protecting
16 the data of your company, might decide you need 20 slots, or
17 you might decide you need 1,000 slots. You buy the slots. And
18 that is something that you contract for with SecurityScorecard.
19 And typically, these contracts are multi-year contracts; they
20 have expiration dates. Knowing when the expiration date is
21 going to occur, which is among the information that was stolen
22 here, is enormously valuable to somebody who's trying to sell a
23 competing service in the cybersecurity world to that same
24 customer. That's what was taken.

25 THE COURT: Okay. So that's one aspect.

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1 MR. TABER: That's the first aspect related to the
2 security monitoring.

3 The second aspect are what we refer to in our papers
4 as bespoke cybersecurity advisory services. SecurityScorecard
5 will come into a company and will study that company and tell
6 them how to enhance their cybersecurity. Think of it almost as
7 a consulting kind of practice. It's typically a high-value
8 service that people pay a lot of money for. And getting those
9 contracts, those relationships, is enormously valuable. And
10 that's a second business in which SecurityScorecard has been
11 quite successful. And those customers are also on the list of
12 what was taken.

13 And the list details for each customer, your Honor,
14 what it is that they buy, how many slots they buy, if they are
15 in that end of the business, what kinds of consulting services
16 they buy, what business partners they work with, all of that is
17 laid out in the information that was stolen here. And it is
18 enormously valuable if you're a new competitor entering into
19 this space and trying to build your business from 100
20 customers, which is what SAFE Security has today, according to
21 the papers that they filed, to the level of SecurityScorecard,
22 which has over 2,000 such customers.

23 THE COURT: And those 2,000 customers are in either
24 one or both of the two lines of business.

25 MR. TABER: Correct.

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1 THE COURT: So that's a total number.

2 MR. TABER: Correct. Total number of customers.

3 THE COURT: Okay.

4 MR. TABER: And they may be in both business lines.

5 There is no doubt, your Honor, on the papers that have
6 been filed now that Ms. Polyakova took without authorization
7 those lists.

8 She claims in her papers, Oh, no, my two supervisors
9 approved it. And her counsel gave me the name of the two
10 supervisors who supposedly approved it. Neither of those
11 supervisors was at SecurityScorecard at the time that she took
12 the materials; and indeed neither of them had been there any
13 more recently than eight months before she took the materials.

14 THE COURT: Her affidavit doesn't identify particular
15 individuals.

16 MR. TABER: Correct.

17 THE COURT: It just said that she did it with the
18 knowledge of supervisors.

19 MR. TABER: Correct. Her affidavit didn't have the
20 names. And when her lawyer and I, Mr. Epner, spoke, and he
21 first approached me about trying to resolve this and told me
22 the story that two supervisors had approved her doing it, I
23 specifically asked him to give me the names of those
24 supervisors so I could go back to my client and ask if that, in
25 fact, ever happened.

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1 And he gave me those names. They were Mr. Salamanca
2 and Mr. Moreland. And I went back to the client and said, Is
3 there any way that they gave those permissions? And the client
4 laughed and said, There's no way they gave permissions; they
5 haven't even been here at the time that she took the stuff for
6 more than eight months in either case. So that explanation, we
7 submit, your Honor, has been completely shattered. There's
8 been no response on that to this point since we put in those
9 papers to your Honor yesterday.

10 They did, I should say, correct something that, it's
11 possible, we had wrong. We thought that she had edited the
12 documents on May the 6th. They have come back – these are the
13 papers I think your Honor referred to that came in this morning
14 – and said that those documents were edited, but they were
15 edited by people at SecurityScorecard. I'm not smart enough to
16 know if you can really do that when the documents are in her
17 possession.

18 I asked the client. The client said if they're Google
19 Share documents, this is a way to do that. I told the client
20 go ask the people that they claim did that editing, if they did
21 the editing. The client did so and advises me that neither of
22 them recall doing it. I don't know if it happened or not; I'm
23 not going to represent to the Court one way or the other. This
24 is a little bit of telephone; he told me, they told me,
25 whatever. So for the moment, your Honor, we're not going to

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1 press the point that she edited this stuff on May the 6th,
2 because we'll need discovery to get to the bottom of that.

3 But where we are now, your Honor, and I alluded to
4 this a moment ago, is we've discovered in just a little bit of
5 time – because we haven't actually conducted formal discovery
6 of any kind at all. But we've uncovered that it was untrue
7 when Ms. Polyakova said that it was Ms. Salamanca and
8 Mr. Moreland who blessed her doing this.

9 And we've also uncovered, your Honor, that her stated
10 explanation in her affidavit, that the reason she needed to do
11 this was because she wanted to work with these documents in
12 Google spreadsheets or Excel is also untrue. And we know that
13 because, as Mr. Cobb says in the affidavit that we put in
14 yesterday, those capabilities are fully available on the
15 SecurityScorecard platform itself. You don't have to email
16 something to yourself at home in order to be able to work in
17 Google spreadsheets or Excel.

18 THE COURT: Because I'm going to get easily lost in
19 the technology, as I understand it, while she may have emailed
20 it to her personal emails, they were not present in her actual
21 devices; correct? They were somewhere on a Google cloud.

22 MR. TABER: So says the forensic person that put in an
23 affidavit for them. We have no knowledge if any of that is
24 true. As the case progresses, your Honor, we will, of course,
25 ask to image those devices, find out what the provenance is.

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1 We do know where she emailed it. We know the email
2 address it went to. Where it went from there, we don't have
3 any information at this stage until we conduct discovery. It's
4 undisputed she emailed it to herself. It's also undisputed
5 that the policies at SecurityScorecard said thou shalt never do
6 that. Because when you email confidential documents to
7 yourself, they are no longer in a secure environment, and
8 anybody can get them, and you can send them to anybody.

9 You could, for example, your Honor, I am told, upload
10 them to a site like box.com, and there would be no record that
11 you had done that, unless somebody was smart enough to go get
12 the records from box.com and see if they were there. But there
13 are, in fact, thousands of those kinds of sites that you can
14 upload them to.

15 And that's a key reason, your Honor, that we're here
16 for injunctive relief. Because we know the information –
17 critical information – was stolen. We know that Ms. Polyakova
18 had it, and we have no idea what she did with it. And we need
19 her and SAFE to be enjoined from using it, disseminating it in
20 any way, shape or form, because it's the lifeblood of our
21 company. And that is an objective that, candidly, we think we
22 can only accomplish through injunctive relief issued by your
23 Honor. Otherwise, we are completely at the mercy of Ms.
24 Polyakova and SAFE to do with this critical information
25 whatever they choose.

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1 THE COURT: You've been using a lot of loaded words,
2 Mr. Taber, and I haven't stopped you. But is it the case, as
3 Ms. Polyakova submits in her affidavit, that prior to the time
4 that she was fired -- or terminated, it was a reduction in
5 force.

6 MR. TABER: Reduction in force; correct.

7 THE COURT: Prior to the time that she was laid off,
8 was she or any other employees at her level or below aware that
9 the reduction in force was in place, was going to take place?

10 MR. TABER: I can't tell you what was in her mind. I
11 can tell you that there were actually two reductions in force,
12 one in January and one in April.

13 The one in January, I can tell you that she was
14 considered for that reduction in force, and was on a list to be
15 included in that reduction in force. And we don't know if she
16 found out about that or not. Ultimately, she was not let go in
17 the January reduction in force, but she was let go in the April
18 reduction in force.

19 So did she know that that was coming? I can't tell
20 you. We'll take her deposition and we will certainly ask those
21 questions.

22 I can tell you that everybody at the company, when
23 they found out that she had downloaded this to her personal
24 email -- and that was not discovered, your Honor, until, I think
25 it was, May 21. It was discovered as part of a concern by the

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1 company that information seemed to be leaking out of
2 SecurityScorecard to SAFE. And so they investigated multiple
3 channels.

4 At that date, May 21st, the rumor mill said that Mary
5 was going to SAFE. She hadn't actually started there yet, but
6 she, I guess, had told friends, who had told friends, and we
7 heard she was going to SAFE. So hers was one of the email
8 accounts that we checked, and people were quite surprised. I
9 don't want to use a loaded word. Quite surprised that she had
10 downloaded this stuff to her personal email, because that was
11 strictly forbidden at the company. And in particular, they
12 were concerned at what it was she had downloaded.

13 THE COURT: And she also indicates that particular
14 purposes for which she did that, right? I mean, she says that
15 she downloaded the list of customers because she was
16 rebalancing the workload of her reports.

17 MR. TABER: Right.

18 THE COURT: And that she downloaded the list of CISOs
19 because she was planning some sort of party or some event.

20 MR. TABER: A joint party with another organization is
21 her story.

22 THE COURT: Do you have any reason to believe that she
23 wasn't engaged in those activities at the time that she --

24 MR. TABER: I have every reason to believe that she
25 didn't need to download it to her personal email to do either

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1 of those things. Both of those things were easily done on the
2 SecurityScorecard internal platform. Google Spreadsheet, which
3 is what she said they used, easily done. She says that there
4 was -- I think her stepdaughter or somebody who helped her do
5 it. If she had wanted somebody from outside to have access to
6 help her do that, also easily done on the SecurityScorecard
7 platform. You never need to remove information of that kind
8 from the secure environment at SecurityScorecard in order to do
9 those kinds of routine business tasks. It doesn't make any
10 sense. The explanation makes no sense.

11 THE COURT: Okay. So I can take it that I can assume
12 from your answer that you have no reason to believe that she
13 wasn't working on those activities that she says --

14 MR. TABER: I don't know. It would not be outside of
15 her job responsibilities to be working on those activities, so
16 I'm not going to quarrel with that. The way that she said she
17 needed to do it, we quarrel very strongly because it's not
18 true.

19 THE COURT: Okay.

20 MR. TABER: Okay?

21 So where we are now is, according to the papers from
22 the other side, they have put the documents that were taken in
23 the hands of a vendor by the name of document mountain? What's
24 the vendor name? I'm sorry, Digital Mountain. It's in the
25 hands of a vendor, Digital Mountain. And they say she can't

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1 access it and SAFE can't access it, and that's good enough. To
2 which I say, your Honor, we're not -- we can't be satisfied by
3 that. We have no control over Digital Mountain; that's a
4 vendor they hired. We can't stop Digital Mountain after today,
5 when we're gone from your courtroom, from giving these things
6 back to them without an order from your Honor that says that
7 all copies of these documents, whether they are at Digital
8 Mountain or whether they are in a Box account or whether they
9 are sitting on her desk at home, all copies must be destroyed.
10 They don't deserve them. They have no right to them.

11 If the other side wants to keep copies at the offices
12 of Goodwin Procter or Mr. Epner's office, fine. We don't
13 have -- but that's for litigation purposes. They're officers
14 of the Court. We'd be fine. But every other copy of this very
15 valuable information should be destroyed. There is no reason
16 for it to be in the possession of a vendor of theirs or anyone
17 else, frankly, or in any other account.

18 And I want to know, your Honor, if we discover that
19 it's still sitting in a Box account and bring that to your
20 attention, that that's going to be a candidate for contempt of
21 court. We need an injunction that makes all of that possible;
22 because this information is the lifeblood of our client, and it
23 represents 20 percent of their entire customer base.

24 The key issues, I think, for purposes of an injunction
25 are irreparable injury. We think that the fact that this is 20

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1 percent of our client base and five times the size of their
2 client base, the 500 clients that we're talking about here, is
3 sufficient to establish irreparable injury when a direct
4 competitor has that information. There's no doubt they are a
5 direct competitor. You can go to their website; and we gave
6 you in our papers the location. And you'll see they have a
7 direct comparison: SecurityScorecard versus SAFE; advantages,
8 disadvantages of each. So they are a direct competitor. And a
9 direct competitor having your customer list, there's lots of
10 law in this district and nationwide that that's subject to
11 trade secret law and injunctions under the DTSA or the, I dare
12 say, routine remedy to protect against that.

13 If we don't get injunctive relief, your Honor, we're
14 put into a world where every time they get a new account, we
15 will have to conduct discovery as to whether they got that new
16 account on their own or because they knew from us that that was
17 an account that was about to come up for renewal or because
18 they knew from us specifically what it was that account wanted.
19 We will be in a maras with respect to hundreds, if not
20 thousands, of customers for years to come to try to figure out
21 whether they did business legitimately or illegitimately based
22 on the information that they had from us.

23 Do we meet the likelihood of success on the merits
24 test? I think if we go claim by claim, the trade secrets
25 claim, it's not disputed by the other side that what is at

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1 stake here are trade secrets. We've spoken mostly about the
2 customer lists. I now want to talk about the customer
3 database, the customer platform. Having access to that
4 platform allows SAFE to see exactly what information we have
5 collected on each of those 12 million customers.

6 THE COURT: Whose fault is that though?

7 MR. TABER: Well, it's not our fault.

8 THE COURT: Why not? You gave them access.

9 MR. TABER: No. No. I want to be really clear about
10 that. We gave them access to what's called a Freemium account,
11 which allows them to see their own security rating and the
12 top-line security rating of up to five other customers.

13 What they did is they did a backdoor with shell
14 companies and with phony accounts that are really security SAFE
15 accounts to get in, in violation of our user agreement.
16 Because our user agreement says competitors cannot access the
17 site, and competitors cannot use information on the site for
18 purposes of going to build their own product or enhance their
19 own product. That's right in our user agreement. They can't
20 get on our site without clicking an "I agree to the user
21 agreement." That's a requirement for access to the site.

22 THE COURT: But if you allow them to go in and, by
23 going in -- let's say they use a fake name. But they go in and
24 they have access to your entire database. Then isn't that a
25 fault of insufficient security safeguards?

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1 MR. TABER: If they are a competitor, they are not
2 allowed to use a fake name so that they are not detected as a
3 competitor. The competitor here, SAFE Security, when they went
4 in under their own name, was only allowed to get their own
5 information and top-line information on five companies.
6 Because that's all that you get.

7 THE COURT: So but that's true of any entity, right?
8 So even if they used five names, they would have to use --
9 rather, five false names, they would have to use hundreds and
10 hundreds of false names in order to get access to --

11 MR. TABER: No, no, no, no. You can buy slots. If
12 you're not a competitor, if you're a true customer, you can buy
13 slots. You can buy ten slots or 100 slots or 1,000 slots or
14 any number of slots that you choose.

15 THE COURT: And did they do that?

16 MR. TABER: Yes, they did do that. Mr. Cobb is the
17 guy who did the forensic work to detect what they did using
18 these phony -- and the only way we caught it, your Honor, is we
19 were able to match the IP addresses, that multi-number IP
20 address, back to SAFE. You wouldn't do that in the ordinary
21 course unless you were engaged in a detective exercise, which
22 at that point we were because, as I said, there was an
23 investigation conducted because we believe they were gaining
24 access to information they weren't entitled to.

25 And here's the most important thing: They don't deny

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1 in their papers that they did that; that they used phony names,
2 phony websites, to get in and get information that they were
3 not entitled to get.

4 THE COURT: They don't deny that?

5 MR. TABER: There's no denial in their papers, your
6 Honor.

7 THE COURT: Do you think they are going to admit that?

8 MR. TABER: Well, we'll see when they get the
9 complaint -- when they answer the complaint. They have the
10 complaint.

11 THE COURT: We'll see what they say this afternoon.

12 MR. TABER: I guess we'll see that this afternoon.

13 But in the papers they filed with your Honor the day
14 before yesterday at 11 o'clock at night, they don't deny that
15 they did that.

16 THE COURT: Okay.

17 MR. TABER: So we think we have a strong trade secrets
18 claim. We think that on the breach of the user agreement,
19 strong claim for all the reasons I just said.

20 Tortious interference. We don't have them as yet
21 recruiting people in violation of the employee nonsolicits, but
22 we know they are out there recruiting, and we're going to need
23 discovery to see if that's going on. At this point, we're
24 simply asking that they be enjoined from tortious interference
25 with the contracts of all of the SecurityScorecard employees

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1 which contain one-year nonsolicit prohibitions. In other
2 words, they can't say -- and they are now, I think it's four
3 employees from SecurityScorecard who have gone over to SAFE.
4 And we're not seeking noncompetes as to any of them; although
5 they actually all have noncompetes, we are not arguing
6 noncompetes here.

7 But as regards those four individuals, they can't use
8 those four individuals to go recruit all their friends back at
9 SecurityScorecard and try and bring them in. And that's a
10 genuine threat. Because Ms. Polyakova, among others, has put
11 on the internet that she's in the market to hire people.
12 That's fine. She can hire whoever she wants. But she can't go
13 back to SecurityScorecard and do that.

14 And I would note, your Honor, we got in the papers
15 from SAFE the other night, we got their standard policies,
16 their standard contract. And like us, they have a one-year
17 employee nonsolicit. Exactly the same. We're just asking that
18 they be required to do what their own contract requires.

19 THE COURT: Can she solicit people that you fired?

20 MR. TABER: People who we fired is not a problem.

21 THE COURT: Okay.

22 MR. EPNER: Your Honor, can I just correct one thing
23 that's actually not --

24 THE COURT: Let's let Mr. Taber finish, and then we
25 can get to the back table. Okay?

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1 MR. TABER: I'm almost done, your Honor.

2 THE COURT: Okay.

3 MR. TABER: Balance of hardships. There is no right,
4 I would submit, for them to use our stolen information, period.
5 So there's no hardship in enjoining them from using it. And I
6 mentioned already we're not enforcing the noncompetes; so
7 concern that we were somehow or other depriving people of their
8 ability to earn a livelihood are untrue and not a factor here.

9 And finally, the public interest. We would submit
10 that the public interest is strongly in favor of not letting
11 people download and take with them confidential information of
12 their employers and use it to their advantage.

13 THE COURT: Thank you.

14 MR. TABER: Thank you, your Honor.

15 MR. PADRO: Your Honor, which would you like to hear
16 from first? I represent SAFE, John Padro. There are certain
17 types of allegations. I'm happy to set the table a little bit
18 and then let --

19 THE COURT: Okay.

20 MR. EPNER: Mr. Padro, please proceed.

21 MR. PADRO: Thank you.

22 So let's talk a little bit about where we are in this
23 case. I think you've heard that they've raised -- that there
24 are at least three issues, and I'm going to talk on behalf of
25 SAFE, that they are seeking injunctive relief against SAFE.

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1 I think what you will see when you look at the papers
2 that they've submitted, as well as we've put in in the reply,
3 that all they've been able to identify is some speculative harm
4 that they believe. There is no evidence; there is no
5 indication of any of these things that have happened.

6 When Mr. Taber got up, first off, to talk about the
7 documents, no word in anything there did he say anything about
8 conduct that SAFE had done. And instead, what you can tell
9 from the declaration submitted in our opposition is that we
10 never got the documents. SAFE never received the documents,
11 never had it, it's never had access to these materials. Yet
12 they still continue to maintain a request for injunctive relief
13 from us to those documents.

14 There is no irreparable harm, there can be no
15 irreparable harm from the fact that there was no real harm
16 here, your Honor. And so I think that is the first point I
17 would like to establish. And I think what we will see here is
18 a shifting sands approach from what the plaintiff has done.

19 THE COURT: Did you hire Digital Mountain?

20 MR. PADRO: Yes, we did.

21 THE COURT: Where are the -- I guess the documents are
22 in a Google cloud. But what can you tell me about your
23 client's ability to access the documents?

24 MR. PADRO: Let me be clear. Goodwin, as the lawyers,
25 has hired -- has got control of Iron Mountain -- sorry, I

O6DVSECO

1 should say Digital Mountain.

2 Can you repeat the question again? Sorry, your Honor.

3 THE COURT: What can you tell me about your client's
4 accessibility to the documents?

5 MR. PADRO: No one at the client has any access to
6 these materials. These are only under control of us through
7 Iron -- sorry, Digital Mountain. Sorry. Wrong mountain.

8 THE COURT: Iron Mountain is the document --

9 MR. PADRO: Correct. Exactly. I think this is maybe
10 a pun on that as Digital Mountain because they do the
11 forensics.

12 THE COURT: I remember that from many years ago.

13 MR. PADRO: Yes. The short of which is -- and to
14 Mr. Taber's point -- had they had concerns about these
15 documents, they could have come to us. We don't want these
16 materials; SAFE has never had these materials. The sheer
17 reality is for what we've done in the five days that we've been
18 involved in this case is immediately try and remedy what the
19 concern is that they've raised. And what's important here is
20 notwithstanding what we've done -- and we think that is more
21 than sufficient to moot the issues -- I would submit to you a
22 couple of things, your Honor.

23 First, it has nothing to do with whether SAFE had
24 access or whether there was any irreparable harm that is
25 attributable in any form to SAFE, okay. This is all -- to the

O6DVSECO

1 extent they want to talk about Ms. Polyakova and what her past
2 role may have been and how those documents are, that obviously
3 can be answered by co-counsel over here as to those particular
4 allegations.

5 But you will see, if we go to the requests they've
6 sought, it is entirely overbroad. And it's overbroad on
7 purpose. Because I think what you can see is the real intent.

8 As Mr. Taber started to tell you, they are very
9 concerned about my client in this marketplace. And what they
10 want this Court to do is to intervene and step -- put their
11 hands on the weights as to see who actually succeeds in the
12 marketplace.

13 And I think what you can tell by each of the harms
14 they are asking for -- and I want to point out the flaws in each
15 of them and to show you what's happening. They started in
16 their opening brief with the only allegation of irreparable
17 harm being the documents. I can point you, if you would like,
18 your Honor, to those specific arguments. But I think if you
19 look at pages 6, where they identify the irreparable harm, the
20 irreparable harm is the disclosure and potential use of those
21 documents and then the outreach to clients. Nothing else is
22 alleged. Okay. So when Mr. Taber says, Hey, you didn't
23 respond to the other allegations, respectfully, your Honor, we
24 don't have to respond to the other allegations. They can't
25 show any irreparable harm for anything else. They haven't

O6DVSECO

1 alleged it, okay.

2 So this case began with a case of three documents that
3 Ms. Polyakova kept or didn't keep, I'll let her answer -- her
4 counsel will answer it, and inadvertently continued to have
5 them as she went on. She didn't know about them, as the
6 declarations attest to and, most importantly, SAFE never knew
7 about them. Until this case was filed, we had no understanding
8 of them, no awareness of them, we had never received them. The
9 forensics shows we had never received them; that she had never
10 sent them to us, okay.

11 But I think the important part with all of this is you
12 require an evidentiary basis to find irreparable harm; it can't
13 just be wild speculation. There's a reason why we hear so much
14 colorful language on what it is that's happened. But what you
15 don't hear is evidence and facts.

16 THE COURT: Mr. Taber indicated -- and I don't want to
17 misquote him, so I'll try to be careful -- that he would be okay
18 with a representation that only the attorneys, which is to say
19 you and Mr. Epner, would have either possession of or access to
20 the documents. Isn't that the case now, as I understand what
21 you've said?

22 MR. PADRO: It is absolutely the case now. And that's
23 why we've represented and I had a conversation with Mr. Taber
24 saying look -- telling him what the likelihood was, and that
25 this was all moot; that there was no reason to continue on with

O6DVSECO

1 the injunction because the expectation or the imminent harm was
2 not existent, right. It's in our possession. It is under our
3 control. If we wanted to have a further conversation about
4 some mutual arrangement to give him some comfort around that,
5 we're happy to do so.

6 THE COURT: Did Mr. Lee destroy the documents?
7 Mr. Lee, he is the guy from Digital Mountain, right?

8 MR. PADRO: Correct. He has not done anything; it is
9 just being held in the environment as we have without
10 restricted access to everyone, pending obviously some guidance
11 from Mr. Taber as to how we would like to handle this and move
12 forward. And when I raised this point, there was a discussion
13 to say, Well, look, we want all kinds of other things for
14 injunctive relief, and we're not going to find resolution on
15 that.

16 I think it is really important to say, Look, we
17 believe, A, first, that SAFE has no correlation or any
18 involvement with the injunctive issues on that first part.
19 Secondly, what they are seeking against SAFE is moot because
20 it's not actual and it's not imminent because of the measures
21 that have already been taken, okay.

22 And I think what's illustrative here is we put that in
23 our opposition; and what we got on our reply were brand-new
24 theories of irreparable harm. Nothing was alleged in
25 irreparable harm beyond the document issues.

O6DVSECO

1 And I do want to point a really critical point. When
2 we talked about the opening, there's the three documents, and
3 then there are kind of a number of "on information and belief"
4 allegations against what SAFE did with them. One prominent one
5 is that we stole a customer, they claim. They say based on
6 what we had, that this customer, Veralto, is a customer that
7 left plaintiff and came to SAFE. That's a sworn declaration
8 from one of their president at a company saying that this was
9 the case. And it actually turns out that wasn't the case.
10 That's the only supposed evidence they can identify. And
11 again, that is kind of representative --

12 THE COURT: It wasn't the case because?

13 MR. PADRO: Because it's not a customer of SAFE. They
14 claim in May that this company, Veralto, left the plaintiff.
15 It may have left the plaintiff, but it didn't go to SAFE and,
16 in any case, we didn't have the documents. So how there is any
17 correlation or any basis to find real and immediate kind of
18 harm doesn't make any sense, your Honor.

19 So, look, I think the issues, when it comes to the
20 documents -- subject, obviously, to what co-counsel will say --
21 have no bearing on SAFE; SAFE has no reason that there should
22 be an injunction. To the extent Mr. Taber wants to talk about
23 what happens with the documents now, we're happy to have that
24 conversation. But it is his burden to make a showing of
25 irreparable harm; it is his burden to show for these documents

O6DVSECO

1 that things that SAFE is going to do have to be there. And
2 really there is no factual basis whatsoever, okay.

3 Now, I want to pivot a little bit. So we put that out
4 there, clearly aware that they have some problems because there
5 are still other allegations, right. That's not the totality of
6 the injunctive relief they look for. They also asked us, as
7 you may be element three, which is to not breach the user
8 agreement. That's the totality of the injunctive instruction
9 of what we have to do. It also asks for the fourth, to not
10 tortiously interfere.

11 Now, Mr. Taber has kind of indicated, Hey, look, you
12 don't really respond to the allegations. That's not what we
13 have to do at this point. They are seeking injunctive relief.
14 They have to meet their burden. That's an exceptional relief.

15 What I can tell you is in their opening papers, there
16 was no discussion about irreparable harm associated with either
17 one of those. The discussion, if you count to page 8 of the
18 brief, what you tell see -- if you can, your Honor, I will
19 point this to you. This is docket number 11, okay. What I
20 will point you to originally is I mentioned earlier, I said,
21 Hey, look, what is the irreparable harm they allege here? That
22 is on page 6 and 7. At the very bottom here they identify two
23 irreparably harms.

24 First, it will be a misappropriation of the
25 confidential information and trade secrets. And those are the

O6DVSECO

1 two documents -- or I should say there are actually three
2 documents, but they call them two categories. And then the
3 solicitation based on that, okay.

4 Then we move on.

5 The first mention about access and these things about
6 bogus interviews you may have heard in passing, they are all
7 atmospherics. If you go to page 8, you'll see those are first
8 mentioned --

9 THE COURT: Go to what?

10 MR. PADRO: Page 8.

11 THE COURT: Okay.

12 MR. PADRO: And you'll see it says, second paragraph:
13 The risk of use of the two documents -- or three documents, I
14 should say -- absent relief is attenuated by history. That
15 doesn't mean that there's separate irreparable harm. That's
16 not what they've said in any form.

17 So when Mr. Taber says, Well, look, I've got all
18 these --

19 THE COURT: I'm sorry. Did you say "attenuated"? I
20 read "accentuated."

21 MR. PADRO: Sorry. Accentuated. You're right.
22 Correct.

23 THE COURT: Very different.

24 MR. PADRO: That's correct.

25 And, your Honor, what I would submit is what we've had

O6DVSECO

1 here is a bait-and-switch. They start with the documents they
2 thought were really kind of the smoking gun. They probably
3 didn't do any diligence. They should have reached out to us to
4 have a dialogue. They don't. Trying to cover what happens.

5 What do we get in the reply? We get whole new
6 arguments about irreparable harm. And what we get is they are
7 entirely legally deficient. They are based in the same kind of
8 manner of what we saw originally, which is just speculation;
9 which is they will -- if we can, I will point you to those
10 allegations. We are in docket number 42. And this is, I
11 believe, on page 5, okay. Starting there, they identify first
12 the disclosure or potential misuse of the documents, moving
13 into page 6. And then on the bottom of -- on page 6, there's a
14 brand-new theory of irreparable harm.

15 THE COURT: Did you say document 42?

16 MR. PADRO: 42 is what I have here. Sorry, it's 44.
17 I'm corrected by co-counsel here.

18 THE COURT: 44, page 6.

19 MR. PADRO: Page 6. Okay?

20 You'll see -- starting on page 5, I should say. They
21 identify a first harm, which is the documents, right; that the
22 trade secrets associated with them will be used or
23 misappropriated, okay?

24 THE COURT: Yeah.

25 MR. PADRO: Then we continue. And for the first time

O6DVSECO

1 in the reply on page 6, we hear a brand-new theory or set of
2 theories, I should say, about other irreparably harms that were
3 never in their opening brief, okay.

4 And I want to point out there are serious issues with
5 what is alleged here, both from not only do we have less than a
6 week to respond, but now we have less than 24 hours to respond
7 to new allegations.

8 What I would say is there were two things, and these
9 both tie to the allegations they have in the injunctive relief
10 they have. And I'll start with tortious interference, because
11 I think that is even more straightforward and it will
12 illustrate what it is.

13 If you look on page 7, for the first time they
14 indicate that there will be tortious interference from us
15 interfering with the nonsolicitation restrictive covenants.
16 Your Honor, that's not pled in their complaint. That is not a
17 basis they've alleged.

18 If you go to their complaint, your Honor – and this is
19 docket number 1, where they allege tortious interference on
20 page 26 – the tortious interference they relate to is inducing
21 apparently Ms. Polyakova to breach her confidentiality
22 obligations. This is quintessential bait-and-switch; and this
23 is the irreparable harm that they are trying to impose, the
24 extreme relief they are looking for, okay.

25 Now, I can also tell you that the allegations related

O6DVSECO

1 to tortious interference from even just having a day to look at
2 them don't hold up scrutiny. They are not real. They claim
3 that she had -- that Ms. Polyakova posted on LinkedIn and
4 indicated that she's looking to hire. And their contention is
5 that violates her nonsolicitation. She's publicly announcing a
6 job. She is not soliciting; she's not targeting. And there is
7 law that indicates that targeting somebody -- that solicitation
8 requires you to specifically target them.

9 THE COURT: Target a particular individual?

10 MR. PADRO: Correct.

11 Because otherwise if you just publicly advertise the
12 post, how could that be a solicitation to a particular person?

13 Now, again, look, this is raised for the first time in
14 the reply; so this isn't, frankly, in front of you or properly
15 in front of you, your Honor.

16 The second thing I would also say beyond that is the
17 allegations they claim, to show tortious interference, there
18 actually has to be an intent to breach the agreement. The
19 first time that we learned that there was a nonsolicitation
20 agreement for Ms. Polyakova was when they filed the complaint
21 and produced that agreement. We didn't have that agreement
22 beforehand. Wasn't present. That was never given to us as
23 part of Ms. Polyakova's onboarding in any form. So to the
24 extent that was a term she couldn't provide, we had no idea.

25 THE COURT: Was she obligated to provide it or was it

O6DVSECO

1 part of your --

2 MR. PADRO: She was not obligated to provide it;
3 probably likely subject to concerns about confidentiality of a
4 third party.

5 THE COURT: You can't talk over me.

6 MR. PADRO: Sorry. Apologies.

7 THE COURT: Just because of the court reporter.

8 MR. PADRO: Sure.

9 THE COURT: One, did she have an obligation to turn it
10 over; and two, is it part of SAFE's policies and procedures to
11 ask during the onboarding process?

12 MR. PADRO: And I will answer that. I don't know the
13 exact facts. What I can tell you are some related facts to
14 this, which is, one, we never received it. I don't know if it
15 was asked for and not received; I assume there would have been
16 some concern, but again, this is just kind of my basis.

17 With regard to your question about policies, actually,
18 when Ms. Polyakova joined the company and when she accepted her
19 offer, was contingent on making sure she agrees and is bound by
20 whatever other obligations she has to third parties. That was
21 specifically part of contingent to her employment, right. And
22 when I spoke to Mr. Taber, I let him know that; that this was
23 an expectation as part of her agreement. We were going to tell
24 the Court that, Look, when she signed it, she told us: I am
25 going to comply with everything I have. We had no knowledge

O6DVSECO

1 until they filed their complaint for the first time, okay.

2 And again, what I would suggest to you, your Honor, is
3 there is no irreparable harm; they can't show the facts. Just
4 conclusively saying, Hey, look, this is going to cause
5 something is not a factual basis, is not a legal basis to
6 actually be able to sustain irreparable harm; nor is it likely
7 to sustain likelihood of success if you can't show any intent
8 to induce that breach.

9 Now, turning to the other allegation. Going back now,
10 they also had a new theory with regard to the access, okay. As
11 you may remember, when we talk about the opening brief, they
12 said the access just shows the ill intent that my client has
13 with regard to plaintiff. That's what they said. They don't
14 identify it as a separate irreparable harm.

15 THE COURT: What access are we talking about?

16 MR. PADRO: Access to their systems.

17 THE COURT: Okay.

18 This is your client's use of false names to --

19 MR. PADRO: Correct.

20 THE COURT: Okay.

21 MR. PADRO: Correct.

22 And what I would submit to your Honor is there was no
23 allegation about irreparable harm related to that in the
24 opening brief. There is no separate panel or reasoning or
25 argument related to the access of documents or what they call

O6DVSECO

1 the breach of contract, okay.

2 And let me submit to you a little bit further here
3 that there is good reason, because they haven't substantiated
4 anything.

5 If you look at their rebuttal brief, which is page
6 DI -- or I should say docket entry 44, if you look, sorry, at
7 page 6 of this, moving into page 7, this is the first time
8 they've identified a supposed alleged irreparable harm
9 associated. And what they identify is that, Hey, once you
10 access the portal, once we improve -- once SAFE improves its
11 products, we can't undo them. That's the totality of their
12 allegations for irreparable harm. There's no explanation of
13 what they saw in the system; there's no allegation of what SAFE
14 supposedly did with that information.

15 THE COURT: Well, I think one of the things they say
16 was they saw your address, your IP address, in connection with
17 several new customers. I don't know one or more --

18 MR. PADRO: No.

19 THE COURT: -- new customers, but what about that?

20 MR. PADRO: Well, respectfully, your Honor, I've had a
21 week, and I haven't been able to get any real immediate answer
22 on what those facts are. I would submit to, your Honor, that
23 supposedly before filing this, there was an entire forensic
24 analysis done. None of that was provided to us. We were told
25 instead -- now, mind you -- and again, this is why the context

O6DVSECO

1 is important -- opening brief says nothing about irreparable
2 harm when it comes to access; makes no allegation about this
3 idea that, Hey, you looked at some McGuffin on our system, then
4 you used that McGuffin to change our product in some --

5 THE COURT: You used that McGuffin?

6 MR. PADRO: McGuffin is -- let me say that McGuffin is
7 kind of like -- we're going to go real tangent here. But in an
8 action movie, it's like the secret thing that somebody that
9 they are all working around, but nobody knows what it is. And
10 so the idea -- let me reframe this so we get to a better place
11 about it.

12 The short of what I'm saying here is there is no
13 specific identification of what it is that they saw in there in
14 any form. What you have on page 6 to 7 in their reply brief is
15 the totality of their allegation of what we saw; and, more
16 importantly, what we did with that; and, more critically, how
17 that caused harm, who knows, because it's not in here.

18 And again, this goes to the same theory across the
19 board about what they've been doing here with the injunctive
20 relief is there's no substance behind what they're saying. I
21 think their position is, Well, we filed a complaint. We think
22 we've got enough of a basis. That means we're also entitled to
23 an injunction. That's just not true. You have to make a
24 finding of actual irreparable harm, that that has been
25 demonstrated, that this is real. If I can't tell you what they

O6DVSECO

1 took, how they took it, what they did, how do you have a real
2 injury here, okay?

3 Now, the other thing I will say, how is it imminent?
4 We've told them in our opposition brief, you know, we're
5 looking into what you've said already; but, moreover, we've
6 instructed all of our employees to not access, okay. So how is
7 there imminence? What is what's next, whatever the
8 circumstance may be.

9 And I would kind of critically say even one step
10 further is there was no irreparable harm here. And you don't
11 hear a lot about this from Mr. Taber. But if you look about
12 the terms of use, there are specific restrictions and
13 indications of what the maximum amount of damages might be
14 associated with any breach of that contract. If you look at
15 the terms of use as they've identified, terms 10.1 – if you
16 want, your Honor, I can point you to that. This is an exhibit
17 to the Sachin Bansal declaration. And this is -- as I have it,
18 this is docket entry 13-5. And you'll see it says "End User
19 Saas Agreement" at the top.

20 THE COURT: I don't have that.

21 MR. PADRO: Okay. But what I will represent to you,
22 your Honor, is that in the provisions 10.1 and 10.2, there are
23 specific quantifications of what the damages are for any breach
24 of contract or any tort relating to the terms of use.

25 So they claim there's a contract; and that we went

O6DVSECO

1 into it and did it in some -- their own agreement says we can
2 tell you what the damages are. They're limited here. They are
3 exactly spelled out. And they did that for their own benefit.
4 But they can't now turn around and try and say something
5 different about it. And when we talk about why does it matter
6 here, in addition to showing likelihood of success and what are
7 they actually pursuing here --

8 THE COURT: What are the damages, by the way?

9 MR. PADRO: Well, the damages are no more than, I
10 believe, 12 months of the fees for the last 12 months. I'll
11 read it back to your Honor just so that it's clear.

12 Neither party's limited liability with respect to any
13 single incident or series of related incidents arising out of
14 or related to this agreement will exceed the amount paid by
15 customers hereunder in the 12 months preceding the incident or
16 series of incidents.

17 And there's some more qualifiers here. But, your
18 Honor, I would say that's pretty easy to quantify. That's not
19 irreparable if you, yourself, have agreed to that, okay?

20 Now, the other thing I would say, earlier on there
21 were suggestions -- and we may even hear -- that there was other
22 downstream injuries that they may want to collect from. I will
23 tell you, the loss of profits, loss of goodwill is specifically
24 addressed in 10.2, which says there will be no liability at all
25 for the loss of goodwill or the loss of lost profits.

O6DVSECO

1 And respectfully, your Honor, again, there can't be
2 irreparable harm here where you can easily quantify what it is,
3 the amount of money that might be in play here. That's the
4 maximum damages they are going to get, okay?

5 So what I would submit to your Honor is I want to pull
6 back the lens a little bit and say what's really happening
7 here? Why are there so many holes in their allegations? Why
8 is it in five days we can establish they don't have irreparable
9 harm, there's no likelihood of success? The context really is
10 is they're very concerned about SAFE in the marketplace. And
11 what they have tried to do – and you've heard bits and pieces
12 of this from Mr. Taber – is that they want this Court to come
13 and start to intervene in that competition.

14 And I think they maybe call it a Freudian slip, but if
15 you look at docket number 44, this is their reply brief, when
16 they get to the section, page 9, where they talk about the
17 balance of the equities and public interest, okay, the first
18 paragraph at page 9 ends with: Yeah, there's no real problem
19 here, you know, with the master list or whatever is going to
20 happen. But they end the line which says: As long as SAFE can
21 demonstrate how it identified those prospects or customers on
22 its own, it faces no risk.

23 And what they want is a court here to intervene for
24 every customer they potentially lose to SAFE, to get in front
25 of here. And that's why they're insistent about, I want to be

O6DVSECO

1 able to call you in on contempt of court, for this exact
2 purpose. Because where they can't compete with us, what they
3 want to do is they want to go and have a court come in and
4 investigate every single thing and slow them down is, in
5 essence, what they want to do with our client.

6 And with respect, your Honor, the burden to try to
7 comply with an overbroad injunction, like they've proposed, is
8 substantial. We're going to have to think about everything
9 that we do. Is this going to end up in some form eventually
10 breaching the user agreement? Who knows what that means
11 exactly. Tortiously interfering with others' contracts. Again
12 - and I want to point you to the specific relief they are
13 looking for in a second - none of that is -- that shows the
14 balance of hardship is in our favor.

15 And I think when we actually looked at what they've
16 alleged for irreparable harm, the document is sequestered.
17 We're happy to work out something with Mr. Taber as to
18 something to satisfy -- you know, the question is why wasn't it
19 destroyed? Because we didn't want to destroy the facts before
20 we had a conversation with Mr. Taber. That's just prudent
21 policy, to the extent we have another question about spoliation
22 or something of that form. So what we did is we preserved
23 every single thing in its form, okay. And that's what we did.
24 So we want to hear from Mr. Taber about how we can move
25 forward. And the way to do that is in the ordinary course of a

O6DVSECO

1 case.

2 THE COURT: I'm sorry, is in what?

3 MR. PADRO: In the ordinary course of our case.

4 We're going to get into discovery. They want these
5 files. The immediate question is with regard to the injunctive
6 relief. There's no basis for it.

7 And I do want to note a particularly pronounced
8 concern, which is if you look at the relief they've submitted
9 to your Honor, the request for -- and I'll direct you again --
10 I won't direct you to what they just -- maybe I will direct you
11 to what they just submitted. I think you were handed a revised
12 proposed order on their behalf.

13 THE COURT: Document 49?

14 MR. PADRO: Yes. Correct. Okay.

15 Now, the only change here is they've changed some of
16 the wording on the first element, the first relief they're
17 seeking. So hopefully we can understand how this will apply
18 more broadly, okay.

19 For element A, okay, they seek for defendants --
20 nonspecific in any form -- to have an injunction preventing
21 using or disclosing the documents. We've told them, from
22 SAFE's point of view, we're not using, we're not disclosing; we
23 don't have them. How are we having an injunction for things
24 that we've never done, never had any part of, okay?

25 Now, the second part of this is they now added all

O6DVSECO

1 this language about -- what they originally had was other
2 confidential information and trade secrets, okay. So vague as
3 to be no idea how to comply with that. They clearly have wised
4 up and tried to say something different. But I would submit,
5 your Honor, this definition they submitted just today is no
6 clearer, okay. It still suffers the same defect. And
7 critically, there is no basis to have an injunction against
8 SAFE. Ms. Polyakova can talk about that particular item.

9 And I want to move on. I'll skip B, because that's
10 Ms. Polyakova as to her items.

11 And then there are two more requests made of SAFE.

12 The first is that we are enjoined from breaching the
13 user agreement. Again, we don't know what that means. We
14 don't even have that agreement; that hasn't been provided to
15 us. We don't know what even forensics evidence that they have
16 that they are hiding or not sharing with us with regard to this
17 allegation. And again, Rule 65(d) is very clear that you can't
18 just say comply with the law. And that's exactly what --

19 THE COURT: Can't just say?

20 MR. PADRO: Comply with the law.

21 THE COURT: Okay.

22 MR. PADRO: Right.

23 And I would submit -- and D is maybe the most
24 illustrative. The same concept again, but you are enjoined
25 from tortiously interfering with her employment agreement and

O6DVSECO

1 anyone else.

2 And what I would submit to your Honor is we've already
3 seen the harm here, which is they started with one theory about
4 what tortious interference is that we took confidential or
5 induced her to disclose confidential information, which turns
6 out to be demonstrably false. And now it's a new one, that
7 we're tortiously interfering by inducing her to breach her
8 nonsolicitation agreements. And that's the exact problem. We
9 can't have an injunction, an open-ended injunction here, that
10 has nothing to do, and then there is no legal basis for any
11 part of it.

12 So, your Honor, I think what we're really seeing here
13 is the context matters. I think when you put all of these
14 specific allegations in place, you won't see specific conduct
15 about SAFE. You won't see specific real harm, irreparable
16 harm, with regard to SAFE. And I think we've laid it out in
17 detail in our opposition brief. And I think the harm is real
18 to SAFE here in this circumstance of a very aggressive,
19 clearly, plaintiff here taking and trying to use the abuse here
20 of what they've gotten or tried to get an injunction to haul us
21 into court every other time they disagree with something we've
22 done in the marketplace.

23 THE COURT: Okay.

24 Mr. Epner.

25 MR. EPNER: Yes, your Honor.

O6DVSECO

1 Your Honor, you noted at the beginning that
2 plaintiff's counsel has used some very charged language; words
3 like "stolen" used over and over again. "Stolen" has a very
4 specific meaning; it means something that was taken to deprive
5 somebody else of materials. There is no world in which this
6 was stolen. And if Mr. Taber doesn't know that, he should.

7 The most that happened here was that my client, in
8 order to do her job, caused materials to be downloaded into an
9 environment where she could get help. And you've heard a lot
10 from Mr. Taber and their client representative about how, Oh,
11 she could have done this within the SSC environment.

12 And, your Honor, we were very careful in our
13 declaration to point out that the reason that Ms. Polyakova -
14 not "Mary"; I wouldn't call opposing counsel anything other
15 than Mr. Taber. And I'm offended that he would call somebody a
16 liar and then use her first name. But Ms. Polyakova --

17 THE COURT: Not just by the first part of that?

18 MR. EPNER: Your Honor, I had the great fortune in my
19 career to represent the United States as an assistant U.S.
20 Attorney. In that entire time, I never once used a defendant's
21 first name. It's a sign of disrespect.

22 Moving on.

23 We were very careful in Ms. Polyakova's declaration to
24 point out that she moved the materials in order to get -- with
25 regard to what they've called the master east list. That she

O6DVSECO

1 moved it in order to be able to get the assistance of
2 Ms. Allgyre, her stepdaughter. And, your Honor, it's very
3 clear -- and I understand that this is new to you, it was new to
4 me -- that it is difficult to manipulate and create the formulas
5 in order to balance the workloads. Ms. Polyakova did not have
6 that ability. Ms. Polyakova asked people at SSC in their tech
7 support group, they either didn't have the ability or didn't
8 have the time to do so.

9 Ms. Polyakova's stepdaughter did have that ability.
10 And Ms. Polyakova's stepdaughter on one occasion received
11 these -- access to these materials through a Google drive so
12 that she could create the formulas to do so. There were other
13 instances where Ms. Polyakova had Ms. Allgyre come to the place
14 where the database was and do that work within the database.
15 In order to do her job, she provided access to Ms. Allgyre; and
16 Ms. Allgyre helped her. And then my client did not access
17 these materials again after she put them back into the SSC
18 database. And that is undisputed.

19 Now, I do want to point out this thing about
20 Mr. Salamanca. To the extent that there's any fault there,
21 it's on me for trying to be too helpful to Mr. Taber. While I
22 was still investigating, I told him that I had spoken to my
23 client, and that she believed that the people who had
24 authorized -- it was Mr. Salamanca and the other gentleman who
25 I named by name. And those names are in the email that I sent.

O6DVSECO

1 As your Honor properly noted, those names are not in
2 the declaration. And reason they are not in the declaration is
3 my client could not swear to them. What she could swear to was
4 that she was authorized. What she could swear to was that she
5 was authorized by the person who was currently supervising her.
6 And what she could swear to was that she was authorized by the
7 people who were demanding that she rebalance these workloads so
8 that SSC could get her best efforts.

9 Now, your Honor, one of the things that I put --

10 THE COURT: Can I just ask you, because one of the
11 things that she says -- and obviously I tried to read her
12 affidavit or affirmation very carefully. At paragraph 6 -- I'm
13 sorry, paragraph 7 she writes: My supervisors and colleagues
14 were aware that I was performing this work, as it was
15 well-known that this work could not be performed with an SSC's
16 Salesforce database, and required the use of Google
17 spreadsheets or Excel.

18 I am told now by plaintiffs that it could be done
19 within the database.

20 MR. EPNER: Your Honor, Mr. Taber was economical with
21 the facts there. What he said was accurate. But what the
22 truth is in context is that the work couldn't be performed
23 within the Salesforce database; it had to be put into a
24 spreadsheet, either a Google spreadsheet or an Excel
25 spreadsheet. It is true that there were Google -- there were

O6DVSECO

1 Excel spreadsheets that were available. It's not clear to me
2 whether or not the data could have been put into a Google
3 spreadsheet; there may have been a firewall. But in order to
4 manipulate the data and create the formulas in order to
5 rebalance the workload, it couldn't be done in Salesforce, it
6 had to be put into an Excel spreadsheet. That's precisely what
7 my client said, and that's precisely correct.

8 THE COURT: But I guess I'm trying to understand, I
9 think what the plaintiffs are telling me is that she could have
10 done that within the environment of the computer system at
11 SecurityScorecard.

12 MR. EPNER: Your Honor, a human being with those
13 capabilities might be able to do that within the environment at
14 SecurityScorecard. My client did not have those abilities.
15 And my client reached out to find people with those abilities
16 at SecurityScorecard, and was told they were not available.
17 And in that context, she told people, I'm going to work with my
18 stepdaughter, Jillian Allgyre, in order to do this work which
19 is essential to being able to perform for SSC.

20 THE COURT: Who is Jillian? I know she's the
21 stepdaughter, but is she some sort of --

22 MR. EPNER: She's a college student at Ohio State,
23 your Honor.

24 THE COURT: She's a college student.

25 MR. EPNER: At Ohio State, yes, your Honor.

O6DVSECO

1 THE COURT: Okay. Go ahead.

2 MR. EPNER: Who happens to have abilities to work
3 Excel and similar spreadsheets and create formulas.

4 THE COURT: Okay.

5 MR. EPNER: And we provided forensic proof that
6 Ms. Polyakova did not share these documents. We provided
7 Ms. Allgyre's devices to Digital Mountain, and Digital Mountain
8 has provided to your Honor sworn declarations that there is no
9 evidence that Ms. Allgyre ever brought any of these documents
10 to her -- any of her devices.

11 Your Honor, they're refusing to take yes for an answer
12 because they want to punish my client by process. And what I
13 mean by that -- and this is not in the declaration. But as an
14 officer of the Court, I am representing to you that I have been
15 informed within the last 24 hours that just before this lawsuit
16 was filed, SSC had an all-hands meeting where they told their
17 people, Don't do anything with SAFE. Don't talk to SAFE, don't
18 go to SAFE. And you're going to see, we're going to file a
19 lawsuit against somebody who just left. And you're going to
20 see what happens to somebody who does that, and you wouldn't
21 want to be her. This is punishment by process. That's what's
22 going on here.

23 Your Honor, I'd like to turn to a few other issues,
24 unless you have more questions about that first database.

25 THE COURT: Go ahead.

O6DVSECO

1 MR. EPNER: With regard to the CISO list, the only
2 thing that is untrue about it is Mr. Taber, in his brief –
3 which I guess he's now retracted at least in part – called my
4 client a liar. She did not access these databases after the
5 dates on which she said she stopped accessing them. The only
6 people, according to the forensics that are in front of you in
7 the supplemental declaration of Mr. Lee, who accessed
8 afterwards are employees of SSC. This is the person who kills
9 his parents and then asks for mercy as an orphan. This is
10 entirely inappropriate.

11 And you've heard that these materials could have been
12 shared with OnSpring within the database of SSC. That's, on
13 its face, ridiculous. The whole point of a firewall was that
14 OnSpring did not have access to those documents. And the best
15 proof of that, your Honor, if you take a look at Exhibits 1 and
16 Exhibit 2 to the Lee declaration – and I'm confident that this
17 does not disclose any confidential information in itself – it
18 says: Use this one. Can be shareable outside the company 424,
19 so forth.

20 These were two dinners that were being set up for
21 joint marketing by SSC and OnSpring. And the purpose declared
22 during a conference call was we need to get this data to
23 OnSpring so we can divvy up the work of inviting people and
24 following up. Now, they can call my client a liar, but that
25 just means that they're intemperate in their words. There is

O6DVSECO

1 no fact behind it.

2 Now, your Honor -- and I apologize, I should not have
3 done so, but when Mr. Taber made statements about what is in
4 their employment agreement, not going to call him a liar, I'm
5 just going to say he was ignorant of what was actually in
6 there.

7 Your Honor, I refer you to document 1-2, page 3 of 10.
8 Mr. Taber represented two things: Number one, that there was a
9 one-year lockup on solicitation and competition; and number
10 two, in response to a question from your Honor, Mr. Taber said,
11 Oh, and that noncompete doesn't apply if somebody has been
12 terminated by the company.

13 Your Honor, I'm going to read the first sentence of
14 the noncompete: I agree that during my employment and for a
15 period of two (2) years following the termination of my
16 employment with the company for any reason, I will not,
17 directly or indirectly, own, manage, operate, control, or
18 participate in the ownership, management, or control of, or be
19 connected as an officer, employee, partner, director,
20 consultant or otherwise, or have any financial interest in or
21 assist anyone else in the world in the conduct of any entity or
22 business that competes with the Business.

23 There is no carve-out for people that SSC fires and
24 leaves on the side of the road. And it's not for one year,
25 it's for two. And this is the employment agreement that they

O6DVSECO

1 are asking that you grant injunctive relief, saying nobody will
2 tortiously interfere with that, nobody will breach any
3 obligations under it. It is the same two-year period for
4 nonsolicitation.

5 Your Honor, as you saw in the documents that were
6 provided to you in support of my initial letter brief,
7 Mr. Taber himself admitted that no court in the world would
8 grant injunctive relief that precluded somebody from using
9 preexisting knowledge after they left the company. The order
10 that they have put in front of you for your honor to sign and
11 put the full force of the United States government behind,
12 including, as Mr. Taber has said, the fear of being hauled into
13 court for contempt of court, does not include a carve-out for
14 preexisting knowledge. It does not include many necessary
15 carve-outs in order for any court to enforce it.

16 Your Honor, I am absolutely certain of one thing: My
17 client came to this with a pure heart. She did her best for
18 SSC while she was an SSC employee. She had no idea she was
19 going to get fired until she was fired. After she was fired,
20 she took a series of weeks, and then she looked for a new job.
21 She got a new job. She never told her new employer that she
22 had access to these materials. She never provided them, those
23 materials. She had no intent to ever look at them again. She
24 frankly didn't even realize at some level that she still had
25 access. And as soon as it was brought to her attention, what

O6DVSECO

1 we did immediately was put them beyond her control, something
2 she is only too happy to do.

3 Your Honor, I respectfully request that you deny this
4 overbroad, inappropriate, punishment by process request for
5 injunctive relief.

6 THE COURT: Before we hear from the lawyers anymore,
7 let me ask this: It seems like there might be a way to take me
8 out of this. And no one would love that more than me. Because
9 it appears as though, to the extent that Mr. Padro and
10 Mr. Epner have offered, that there is no reason why plaintiff
11 should not be amenable to a stipulation concerning the
12 safeguarding or even destruction of the documents. The
13 representations have been made by gentlemen that are members of
14 the bar of this Court, that the documents are -- have been
15 turned over; that Ms. Polyakova no longer has access to them;
16 that they are being constrained in a way that no one has access
17 to them except perhaps the lawyers and Mr. Lee of Digital
18 Mountain. There is the supposition that Ms. Polyakova could
19 have done something else with the documents prior to the time;
20 they could have been put in a Dropbox or a Box or a drop. But
21 as I stand here, that appears to be speculation.

22 And therefore, I think it would make sense, Mr. Taber,
23 unless you are insisting on not having that conversation, that
24 that conversation take place, and that the defendants make
25 representations to you along the lines that I believe you

O6DVSECO

1 started on, that you want those documents either destroyed or,
2 you know, that there be some representations concerning where
3 they are, who has access.

4 MR. TABER: The short answer, your Honor, is it could
5 be done provided that the end product of that, that
6 stipulation, is so-ordered by the Court. And I said those very
7 words to Mr. Epner the first time he called me. I'm still
8 saying those words. That piece of it can be handled by a
9 so-ordered stipulation that says -- I'll lay it out. Number
10 one, that all copies of these materials have been destroyed
11 except for, number two, the copies that are in the possession
12 of the lawyers for purposes of litigating the case; and number
13 three, that there's a representation by both SAFE and by Ms.
14 Polyakova that there are no other copies extant of these
15 documents; and that all of that is so-ordered by the Court.

16 That would not be difficult and would solve part of
17 why we're here. Because in my world, a so-ordered by the Court
18 is, in effect, an injunction that comes with contempt of court
19 if, in fact, it's not true. And so that we would be able to
20 live with as it relates to those documents.

21 THE COURT: Okay.

22 MR. TABER: I have a lot to say about other pieces,
23 and quite a lot has been said here, and I'd like the Court's
24 indulgence to respond to it. Among other things, there haven't
25 been a mention of the law here yet, and I'd like to share with

O6DVSECO

1 the Court what I believe is the operative law here,
2 particularly as it relates to irreparable injury. Because
3 there's been, I think, a gross mischaracterization by Mr. Padro
4 in particular about that. I'd like to address that.

5 We do need, I believe – because I haven't heard any
6 inkling of consent – injunctive relief that keeps them off of
7 our customer portal and stops them from masquerading in ways
8 that we might not detect for months or years as people who they
9 are not in order to go on to that customer portal. And we do
10 need injunctive relief to enforce the contracts.

11 I was very surprised to hear somebody say – I think I
12 heard them say – they didn't know what the contracts were.
13 That's not true. Because we have correspondence from the
14 Goodwin firm with respect to the contract of another one of the
15 people that they hired that they were commenting on. They have
16 the standard SecurityScorecard contract, they've had it for
17 some time. And if they didn't have it before or didn't realize
18 they had it before, they have it now in these papers. But we
19 cannot have them interfering with the nonsolicit process.

20 I think, with all due respect, Mr. Epner is confused
21 between nonsolicits and noncompetes. We're not enforcing the
22 noncompete. The language he read you about a noncompete that
23 applies for two years to somebody who has -- regardless of the
24 circumstances under which they left the company, is completely
25 irrelevant. That's not what we're talking about. We're

O6DVSECO

1 talking about a nonsolicit of employees by people who are no
2 longer at the company.

3 And your Honor asked me appropriately, did that mean
4 they couldn't solicit people who were no longer at
5 SecurityScorecard; and I said no, that's not within the ambit
6 of the noncompete. I think Mr. Epner got confused and
7 thought -- not within the ambit of the nonsolicit. I think
8 Mr. Epner got confused and thought I was talking about the
9 noncompete. I'm not. But we have to address, for injunctive
10 purposes, the customer platform and interference -- tortious
11 interference with the contracts.

12 The document piece of it, I think your Honor is
13 correct, I thought that proposition was correct from the very
14 beginning.

15 There was another comment, I think, from Mr. Padro
16 that the language in the proposed order that we gave you
17 defining the term "proprietary materials" was unintelligible.
18 That wasn't his word, but it was -- in effect, it was
19 unintelligible.

20 THE COURT: Overly broad.

21 MR. TABER: Overly broad.

22 We lifted it verbatim from the SAFE employment
23 agreement that Ms. Polyakova signed, and it's attached to the
24 papers. Because I didn't want to have a fight about that
25 language. We just took their language verbatim and put that

O6DVSECO

1 into the proposed order here, and that would be part of the
2 proposed stipulation as well.

3 I'm willing to give that piece of it a shot. I do
4 think we have to deal with the other injunctive pieces. And
5 I'd like to address those when your Honor is ready for me to do
6 so.

7 THE COURT: Let me ask you about the purported
8 violation by SAFE of basically sneaking into your systems, and
9 I apologize for the nontechnical term --

10 MR. TABER: It's as good as any.

11 THE COURT: -- that I use.

12 Why can't you just -- I mean you've identified them or
13 you think you've identified one or more. Why can't you just
14 shut them down?

15 MR. TABER: The ones that we caught, we have shut
16 down. They are all shut down. What we can't stop is if they
17 get somebody else now, as they did previously, who is
18 affiliated with them, who we don't know is affiliated with
19 them, who has an IP address that we don't recognize, brand-new
20 IP address. We can't stop that. We might catch it eventually.
21 If we do the detective work that we did this time, we might
22 catch them.

23 But it's very easy -- Mr. Cobb can explain it better
24 than I can, because I'm not technical. But it's very easy from
25 another address for somebody affiliated with SAFE who doesn't

O6DVSECO

1 have the name SAFE and we don't recognize as affiliated with
2 SAFE, to sign up for the service and give all that information
3 over to SAFE. It's not difficult to do, but they need to be
4 enjoined from doing that because that's the deal. They can't
5 be there.

6 THE COURT: Mr. Padro.

7 MR. PADRO: Yes, just a couple of points, your Honor.

8 To the overall framing, I think this is the same
9 discussion I had with Mr. Taber. I said, Hey, look, with
10 regard to the documents, I think we can reach some agreement as
11 to what's happening to them. And where the conversation
12 immediately turned was, We are still pursuing all the other
13 injunctive relief. And I went through and I had the
14 conversation with him.

15 I said, Well, when you asked for the documents, what
16 else do you need shielded, protected, whatever form? You
17 have -- in your injunctive relief you are looking for other
18 trade secret and confidential material with no specificity.

19 There was no further discussion as to what it might
20 have been; there's nothing in their briefing. And I think what
21 I would submit to your Honor is, look, if we can get to a point
22 where that is the only issue that needs to be addressed, I
23 think the parties can resolve that. I think the remainder of
24 injunctive relief they are looking for has to be denied. I
25 think there is no legal basis for what there is.

O6DVSECO

1 THE COURT: I want you to specify what it is that
2 you're talking about.

3 So you're no longer talking about the documents.

4 MR. PADRO: We're not talking about documents.

5 THE COURT: Let me ask you this: Based on the way
6 that he framed it, would you be willing to enter into a
7 stipulation? It would be so-ordered by the Court with respect
8 to the documents.

9 MR. PADRO: I think with respect to the documents,
10 obviously talking about the representations and being able to
11 agree on those in terms of what it is that we have or doesn't,
12 yes, I believe so. We need to see the details, but I don't see
13 any concern, listening to what I've now heard right now with
14 regard to the documents.

15 THE COURT: Okay.

16 MR. PADRO: What it talks to about beyond the
17 documents, about these vague categories of trade secrets and
18 confidential information, which is what Mr. Taber tried to add
19 on to his statement beyond the documents. So there are the
20 three documents that we've talked about; that's what they've
21 alleged, that's what they've identified, that's what remedial
22 measures we've already taken.

23 There is another bucket in the first element of their
24 request for relief, which is a general category of trade
25 secrets and confidential information.

O6DVSECO

1 THE COURT: Can I just be as straight as I possibly
2 can. He's saying that you are directly and by proxy entering
3 into client agreements with SecurityScorecard, and going into
4 their systems and rooting around and looking at stuff that you
5 shouldn't be looking at.

6 You didn't make any representation about that, that
7 you're not doing that, and I'm not going to force you to make a
8 representation if you're not prepared to do so. But, you know,
9 that seems to me to be not good.

10 MR. PADRO: Respectfully, your Honor, I would admit
11 we've had five days with the materials. And as I mentioned,
12 whatever forensics analysis they've done, it hasn't been shared
13 with us. And what I would submit, your Honor, is we'll get a
14 chance to respond to that as part of discovery.

15 But what I can tell you is there is no legal basis for
16 the injunctive relief they are looking for. You're going to
17 have to put a finding out there that says "what is the
18 irreparable harm here." They can't even identify what was
19 taken; they can't tell you what somebody looked at; they can't
20 tell you what somebody did with it. They just say vaguely,
21 Hey, we were able to improve our products faster.

22 THE COURT: I don't even know they say that.

23 But what they do say is they say, Our agreements
24 require you to represent that you are not a competitor; and
25 that, you know, you will only use this database in a way that

O6DVSECO

1 this agreement or this contract allows.

2 You broke the first part of that because you are a
3 competitor and you went in there by some trick that you entered
4 into a contract. So they've alleged that.

5 Why isn't that sufficiently specific?

6 MR. PADRO: I don't know how that is irreparable harm,
7 right. Irreparable harm is not just a colorable claim for
8 breach of contract, right. What he's asking you to do is just
9 say, well, we've pled the elements of a claim. But they have
10 to show a real imminent irreparable harm. And as I think I
11 represented to you earlier, all three of those they fail at,
12 right. They are allegations, when it comes to how this is a
13 real harm, are entirely conclusory.

14 If they had this very detailed forensic analysis done
15 about what was done and what they saw, why hasn't any of that
16 been presented? That's what they have to do to prove
17 irreparable harm. There has to be some actual evidence to
18 demonstrate that something happened. Just having Mr. Taber get
19 up there and say, Hey, look, this is what we think could have
20 been happening, I have no way to test whether that's true or
21 not; because, you know what, it hasn't been disclosed to me.

22 THE COURT: Okay.

23 MR. TABER: That's incorrect, your Honor.

24 Paragraphs 40 to 45 of Mr. Bansal's declaration spell
25 out exactly what they did, who did it, using what IP addresses.

O6DVSECO

1 These are their people; they can go look and see what they did.

2 We actually know that they engaged in heavy-duty use
3 of the system, looking at hundreds of scores and details with
4 respect to hundreds of portals. And the person who did that
5 analysis is two seats to my right.

6 THE COURT: Let me ask you this: I believe Mr. Padro
7 also said in his earlier comments, even if true, the damages
8 are defined and limited in those very contracts.

9 MR. TABER: Monetary damages, your Honor. There is a
10 clause, I don't think it applies, frankly, to compensatory
11 damages. But today is not about damages; today is about
12 injunctive relief. And if your Honor takes a look at a case
13 called *Muze* from the Southern District of New York in 2000, it
14 says quite clearly that accessing somebody's database to
15 rummage around in the way that they did here is irreparable
16 harm.

17 Why? Because the reason they are in there doing that
18 is so that they can improve their products as against ours. So
19 they can look at what information has SecurityScorecard managed
20 to collect about General Motors, and do we have the same
21 information. How are we deficient? What are they missing?
22 That gives them a competitive edge in improving their system.

23 And it's irreparable injury because when they improve
24 their system, A, we'll never know that that's what they did;
25 and B, once improved, how do we unscramble that egg? It can't

O6DVSECO

1 be done. Which is why the very notion of allowing them to
2 rummage around in our data, when they are not allowed to be
3 there, and expressly execute a user agreement that says they
4 can't be there as a competitor, is wrong and it should be
5 enjoined. That's one aspect of irreparable injury.

6 Your Honor, I want to talk more broadly, if I can,
7 about irreparable injury. Because in this district – and I'm
8 referring now to a case called *Hello Logistics* from 2023 –
9 irreparable harm is presumed when trade secrets are
10 misappropriated. Presumed.

11 What does it mean for trade secrets to be
12 misappropriated? Under the Defend Trade Secrets Act, there are
13 three ways, one of which is plainly what has happened here, and
14 that is the acquisition of the trade secret.

15 Now, there are two other ways, disclosure or use of
16 the trade secret. And they may have done that too, we don't
17 know. But we do know, as we sit here today, that they acquired
18 our trade secrets. They acquired the lists that Ms. Polyakova
19 took, whether innocently or not. I don't believe we've heard
20 an explanation of innocence. I still don't think we've heard
21 who was the supervisor who approved it. I don't think any
22 supervisor did approve it. And believe me, we talked to the
23 current supervisor too. And he says, Not only didn't I approve
24 it, I never would have approved it. That's not the kind of
25 thing -- we don't let people take things out of the company,

O6DVSECO

1 especially not customer lists.

2 I don't know at this point what their new explanation
3 is. I do know when I spoke with Mr. Epner he gave me the two
4 names of people who aren't there. That's who he told me the
5 supervisors were. Now we're getting a different story. All of
6 that will get fleshed out in discovery.

7 But the fact of the matter is I don't have to prove
8 anything more than they have acquired -- acquisition under the
9 DTSA -- the trade secrets, to now have -- that's a
10 misappropriation. And misappropriation under the *Hello*
11 *Logistics* case -- and there are a lot of other cases it cites --
12 is presumed -- irreparable harm is presumed upon such
13 misappropriation.

14 It is also the case, your Honor, that when customer
15 relationships are threatened, that's irreparable harm. And if
16 they have our customer list -- and I get it, they are up, down,
17 and situation disavowing that they have it. And now apparently
18 maybe we'll be enter into a stipulation that they'll never get
19 it. But when we walked into the courtroom today, I had no such
20 stipulation. And when I spoke with Mr. Epner about such a
21 stipulation, he wouldn't enter it because he said, Your
22 definition of "confidential information" is too broad.

23 MR. EPNER: Your Honor, can I respond to that, please?

24 THE COURT: No.

25 MR. TABER: So, your Honor, when we got their

O6DVSECO

1 opposition papers and I saw the definition of "proprietary
2 information" in their contract, I lifted it verbatim, and
3 that's what we're using. And now for a second time I just
4 heard Mr. Padro say the definition is inadequate. I don't get
5 that. It's his client's own definition.

6 And yes, we don't know what else Ms. Polyakova took.
7 We don't know what other information she has. So I can't live
8 with a solution here. Now that I know she's willing to email
9 her stuff things from the company, we have to protect any of
10 the proprietary information she took. That may be the null
11 set, and that would be wonderful. But an injunction against
12 her that says, Thou shalt not use any proprietary information,
13 define the way SAFE says it, there's nothing unlawful about
14 that at all. And it's more than justified on the facts here,
15 now that we know that she's taken what she has taken.

16 THE COURT: Mr. Padro?

17 MR. PADRO: A few quick points here, your Honor.

18 First, I would say, what you hear from counsel here is
19 a lot of mixing and matching. We're talking, again, about the
20 documents, when he talks about a presumption of irreparable
21 harm. What you don't hear is anything about irreparable harm
22 when it comes to this access. And I think that's where the
23 mixing and matching --

24 THE COURT: Well, no. What he said was that mere
25 access is irreparable harm.

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1 MR. PADRO: Correct.

2 THE COURT: I don't know if that's right.

3 MR. TABER: That's the *Muze* case, your Honor, that I
4 cited.

5 THE COURT: Correct.

6 MR. PADRO: If I could quickly respond to that.

7 What he's talking about the presumption, he's talking
8 about trade secrets. There have been no other trade secrets
9 allegedly identified. We don't have an issue later talking
10 about whether the documents themselves that they've identified
11 are trade secrets, but there's nothing else identified.

12 You have to make out a claim for trade secret; you
13 have to identify what that trade secret is. What is the trade
14 secret in their system that they claim to have in it? What is
15 it? I don't know. I can't respond to it. Because, guess
16 what, it's not been identified. And Rule 65(d) is really clear
17 you. Just can't say, Hey, don't use my trade secrets. You
18 have to make very clear – there's case law around this in our
19 briefing – that you have to specify what those trade secrets
20 are.

21 And I think this all highlights the point about
22 irreparable harm about the access is it's all speculative. It
23 is, You guys did something inside of our system. We won't tell
24 you what it is; we won't tell you how you used it. And by the
25 way, Judge, we want you to just give us an overbroad

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1 injunction. Just comply with the law. Just don't use trade
2 secrets.

3 THE COURT: Did you finish?

4 MR. PADRO: One last point, if I could, on the *Muze*
5 case.

6 I think the *Muze* case is distinguishable for a variety
7 of reasons. But I think what you will see when you look at
8 *Muze*, when they talk about irreparable harm, there's actual
9 evidence of harm. When you read that case, the allegations
10 there show what somebody did, what they accessed; and then
11 critically, they also said somebody did something with that.
12 And that's why a court found irreparable harm, because that's
13 what's needed to sustain the extraordinary relief that they are
14 looking for here.

15 None of that is present here. None of that is
16 present. There's nothing imminent. And frankly, your Honor,
17 there's no basis to that part of it.

18 And so what I submit to the Court is the pathway
19 forward is let's have a discussion about let's get a
20 stipulation on the documents so we can find a way to move
21 forward with the case of the discovery. But the remainder of
22 the injunctive relief should be denied. If they want to pursue
23 discovery as this case goes on and they actually want to
24 articulate a theory, as we have, what they shouldn't do is
25 get -- just because they think they pled enough, that that is a

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1 basis for injunctive relief, because that's not the law.

2 THE COURT: Mr. Epner.

3 MR. EPNER: Yes, your Honor.

4 I'm going to pass over -- and I apologize for breaking
5 in -- the statement by Mr. Taber about whether or not he was
6 previously told that my client was ready to stipulate to having
7 zero future access and having it so-ordered with regard to the
8 documents. Your Honor has the emails that went back and forth.
9 Your Honor, I am quite confident I can put myself in your hands
10 and I have no concerns.

11 Your Honor, there's a reason why I separately
12 represent my client from the company. And that's because my
13 client has separate interests from the company. And the fact
14 that Mr. Taber keeps saying, Oh, just use this language that we
15 took from the SAFE agreement, your Honor, Mr. Taber himself
16 admitted that no court in the world would enforce an injunction
17 that failed to carve out preexisting knowledge of a person.

18 THE COURT: But I think Mr. Taber also said that
19 aspect of the noncompete is --

20 MR. EPNER: No, no, this isn't about the noncompete.
21 This is about the definition of "proprietary information."

22 My client had eleven years of experience in this
23 field; her own contacts, her own people, who she knew who to go
24 to. It's what they hired her for. And now the definition that
25 they are using of "proprietary information" would say

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1 everything that she had --

2 THE COURT: Could I just stop you for a second.

3 Mr. Epner -- I'm sorry, Mr. Taber, did I understand
4 you to say that the only aspect of the agreement that she had
5 with SecurityScorecard is the nonpoaching aspect of it?

6 MR. TABER: Yes. The noncompete is off the table and
7 has been, as I told Mr. Epner three days ago, four days ago.

8 What I think he's quarreling about -- and I don't,
9 frankly, understand it because the language we propose
10 addresses it -- is we are asking for an injunction that says she
11 can't use any other proprietary information she has.

12 MR. EPNER: But the definition of "proprietary" --

13 MR. TABER: Please.

14 MR. EPNER: Your Honor, please, I'm begging you.
15 Because Mr. Taber is obfuscating.

16 The definition of "proprietary information" that my
17 client is not allowed to use to solicit customers does not have
18 a carve-out for the information that she had in her head about
19 customers on the day she started working for SSC. I've pointed
20 that out to him five times. He's always agreed that that's
21 unenforceable, and he's never put it into his proposed order.
22 It's still not there. His only excuse is, Well, that's the
23 language she agreed to from SAFE.

24 MR. TABER: No. Your Honor, I don't understand why he
25 can't read what's literally --

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1 MR. EPNER: I can read, Mr. Taber.

2 MR. TABER: Clause A refers in the definition of
3 "proprietary information" to information "she developed,
4 learned or obtained during the term of her employment." The
5 stuff that she knew beforehand isn't included. It's right
6 there in black and white. So I'm not sure what his problem
7 with that -- and again, that's the language from her existing
8 contract that she signed with SAFE a month ago when she joined
9 SAFE. So that's how we decided to define it, to get around all
10 of the problems that he was raising with me.

11 One other thing, your Honor --

12 MR. EPNER: Your Honor, can I speak to that? Because
13 there's still a problem.

14 MR. TABER: I wish you'd just let me finish, because I
15 have other points to respond to what he said and we're just
16 going down a rabbit hole.

17 Your Honor, he said something that was very troubling
18 to me, and it was sort of the centerpiece of his argument about
19 punishment by process that my client put out something, said
20 something about there being Mary -- I'm sorry, Ms. Polyakova
21 would be made an example of, and that that's the whole reason
22 for this litigation. So I furiously texted my client and I'll
23 read you the exchange.

24 Mary's counsel --

25 MR. EPNER: Is this a waiver of privilege? Is this a

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1 waiver of privilege, your Honor?

2 THE COURT: I don't know.

3 MR. EPNER: Your Honor, before he says it out loud,
4 I'd like a representation about whether or not this is a waiver
5 of privilege on all communications with his client on the topic
6 of today's injunctive hearing. To the extent it is, fine; to
7 the extent it isn't, your Honor, I respectfully suggest it's
8 not appropriate for him to read.

9 MR. TABER: Your Honor, he made a representation to
10 the Court that something occurred. I sent my client the
11 following text: Mary's counsel just said -- I'm sorry for using
12 her first name, but that's -- her last name is a long name and
13 we haven't done very well with it. Ms. Polyakova's counsel
14 just said that right before this lawsuit started, there was an
15 all-hands meeting at SSC announcing the lawsuit and telling
16 people "This is what will happen if you do what Mary did."
17 True?

18 He responded: No, not true.

19 He then shared with me -- and at some point I suspect
20 in discovery it will be -- it will be shared -- the
21 communication that went out advising people of the lawsuit,
22 giving them a link to the filing. That's what happened.

23 This notion that people were told that there's going
24 to be an example made of somebody through this litigation is a
25 falsehood. I don't understand how Mr. Epner can claim to know

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1 it, because obviously he wasn't present. He's got it on second
2 or thirdhand, maybe his client told him, but she wasn't there
3 either, from somebody else. I don't know.

4 But I can't leave that record with the suggestion that
5 this is somehow or other a make-an-example-of lawsuit. Far
6 from it. This is a lawsuit about somebody who admittedly has
7 information she shouldn't have.

8 We're now all trying to figure out how to put the
9 genie back in the bottle, okay. There are ways to put the
10 genie back in the bottle, and from day one we've been amenable
11 to that. We've even gone so far as to say, Let's put the genie
12 back in the bottle using the contractual regulatory language
13 drafted by SAFE itself to define what has to be put back in the
14 bottle. But it has to be put back in the bottle. And New York
15 case law and Southern District case law is clear that
16 irreparable harm is presumed when this kind of trade secret
17 information -- and you haven't heard anybody on the other side
18 there say it's not trade secret information. Nobody has said
19 that.

20 THE COURT: Mr. Padro says, What's the trade secret?
21 Define the trade secret. And I think he's right. I mean, I
22 think for you to come in here and say they've taken our trade
23 secrets and enjoin them from doing so, you have to tell me what
24 it is.

25 MR. TABER: And your Honor, I overgeneralized.

O6DVSECO

1 What they have not denied is that the customer list
2 that she took and the prospect list that she took are trade
3 secrets. So that's established. Nobody has said on the other
4 side those aren't trade secrets. And the law is, frankly,
5 overwhelming that those are trade secrets.

6 Now the question is, as I said, how do we put the
7 genie back in the bottle. With respect to those specific
8 documents, it sounds like there's a path forward. With respect
9 to whatever other trade secrets she may have taken, because we
10 now know this is an individual who feels authorized – I'll use
11 that word – to send things to her personal email from the
12 company, whatever else she sent, we don't know. We only know
13 what we found, but we don't know. People can put things on
14 thumb drives and walk out the door. We don't know what she has
15 or not.

16 THE COURT: But now, Mr. Taber, we're clearly in the
17 realm of speculation.

18 MR. TABER: Absolutely.

19 But I would say, your Honor, it is commonplace in this
20 district to -- and I myself have had cases where we have
21 secured on the basis of proof that somebody has taken an item
22 that is a trade secret a general injunction, especially with an
23 employee who has a confidentiality obligation in their
24 contract, which Ms. Polyakova had. We get an injunction that
25 says: Thou shalt not, in accordance with your contractual

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1 obligations and the Defend Trade Secrets Act, use any other
2 trade secrets.

3 And then the question becomes, Okay, what's the
4 definition of "trade secrets"? That's the place where actually
5 I went to their contract for their definition, and that's what
6 we put in the proposed order, so that it wouldn't be subject to
7 an attack as being vague or overbroad or what have you.

8 THE COURT: I'll take you at your word, Mr. Taber,
9 that there is case law in this district – I'm not familiar with
10 it, quite honestly – where it has been established that someone
11 took a trade secret, then there is an assumption, a reliable
12 assumption, that they took perhaps others.

13 What we don't have in this case is the proof that
14 trade secrets have been stolen. What we have in this case is
15 the fact that maybe trade secrets were used inappropriately in
16 the course of her employment, when she was clearly in the
17 course of her employment, she clearly had access to these
18 documents. Appears to be no dispute about that.

19 MR. TABER: Yes, correct. There is no dispute she had
20 access as an employee to these materials.

21 There is a vigorous dispute that she was authorized to
22 take them because, in fact, the company's policies in its
23 handbook say unequivocally thou shalt not email it. She has
24 come up with to this point an unsubstantiated explanation that
25 she says she was authorized to do it. She can't tell us by

O6DVSECO

1 whom. The names that I was given as the "by whom" by her
2 counsel are plainly incorrect. The suggestion that her more
3 current supervisor gave it is also incorrect. And we can
4 produce an affidavit from him, now that we hear that that may
5 be the claim, saying that he never did it.

6 She didn't have the right to have those materials at
7 the time she took them. But even if we accept her story that
8 she had the right to have them for purposes of her work at that
9 time, when she left the company, she was under an obligation to
10 return all company materials. That's a standard provision at
11 every company. If you have confidential company materials,
12 they must be returned. She did not return them. She still has
13 them or had them until she handed them to Digital Mountain.

14 So whether intentional or not, for the moment, I'll
15 accept -- although I don't credit it, the explanation -- that it
16 wasn't intentional. But let's accept that she had them
17 unintentionally. She still had them. And that possession of
18 those materials after she left her employment all by itself
19 amounts to misappropriation. And she has to bring those back.
20 And that triggers --

21 THE COURT: Those are slightly new arguments,
22 Mr. Taber. But we should probably bring this to some kind of
23 an end, but not until Mr. Padro --

24 MR. PADRO: I'll just have three quick points, and I
25 promise they will be very quick.

O6DVSECO

1 We clearly are going to dispute whether these are
2 trade secrets, I just want to make that clear. There's no
3 admission or any form of that.

4 The second thing I would submit to you, as I think
5 your Honor is hitting on, there is no presumption of
6 irreparable harm here. There has to be a showing of some
7 further disclosure, which there is nothing of that. And that's
8 demonstrable by it.

9 And then I think what you didn't hear from Mr. Taber
10 are any other trade secrets, right. And that's the problem
11 with what it is. We've talked about the documents. The
12 stipulation is a way that we can talk about dealing with those
13 documents. The vague category of any other trade secrets, that
14 is prohibited under Rule 65, and I will tell you 65(d). And if
15 I can, from my brief, document 32, page 23, I'll just read the
16 quote.

17 THE COURT: Read slowly.

18 MR. PADRO: Sorry, sorry, your Honor.

19 This is document 32, page 23, okay:

20 Under Rule 65(d), an injunction that prohibits the use
21 or disclosure of trade secrets or confidential information must
22 also specifically describe the nature of the secrets or the
23 confidential information to be protected.

24 The relief they put in front of the Court at the very
25 beginning here does none of that. This is from the Second

O6DVSECO

1 Circuit.

2 MR. TABER: Your Honor, if I may, the case that I was
3 referencing, where exactly the injunction we're describing was
4 entered, is *CrossBorder Solutions v. Hoy*, case number 20 CV
5 04877. Decision was on -- the entry of that injunction was on
6 June 26, 2020, and I was counsel of record in that case. That
7 was before Judge Román in White Plains.

8 THE COURT: White Plains. Okay.

9 MR. EPNER: Your Honor?

10 THE COURT: Mr. Epner.

11 MR. EPNER: Yes. I just want to briefly turn back to
12 the language that Mr. Taber has once again pointed to as having
13 come from SAFE. And frankly, when I put it in my brief, I
14 thought maybe it was overkill to make this analogy: My client
15 is married to somebody else in the cybersecurity industry. So
16 the prohibition on the use of information learned or obtained
17 during the term of her employment literally -- if it was about
18 the cybersecurity industry, literally would prohibit her from
19 using information that she learned at her husband's office
20 picnic.

21 Your Honor, we have no dispute whatsoever with regard
22 to the documents. I am confident that we can come to a
23 stipulation with regard to that.

24 With regard to everything else that Mr. Taber has
25 asked for, it is entirely inappropriate, and I urge you humbly

O6DVSECO

1 to deny it.

2 THE COURT: Okay.

3 So this is what I'm going to do: I'm going to direct
4 the parties to meet and confer concerning the appropriate
5 disposition of the documents. Again, the representations have
6 been made that they have been -- again, I apologize for my
7 language, that they have been captured by Mr. Lee of Digital
8 Mountain; and that Mr. Lee has caused them to be safeguarded in
9 a way that only he and his colleagues at Digital Mountain and
10 the attorneys representing Ms. Polyakova and SAFE Securities
11 have access to them.

12 It appears that the defendants are willing to work
13 with plaintiffs to determine a way to dispose of those
14 documents that will both satisfy the plaintiffs that they have
15 been properly destroyed, and allow the defendants to maintain
16 copies that will allow them to properly litigate this case
17 going forward.

18 With respect to the other two aspects of the
19 preliminary injunction, I will not issue a preliminary
20 injunction today. That is without prejudice. I find that
21 there is an insufficient basis upon which to issue an
22 injunction concerning the supposed improper access by SAFE
23 Securities and its proxies, if such there are any, to access
24 the databases of SecurityScorecard. Although I understand that
25 some forensic evidence exists to show that, in fact, there has

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1 been an intrusion by SAFE Securities and its proxies into
2 SecurityScorecard's databases. I don't think, or at least
3 there is not before me an adequate representation as to what,
4 if any, actual trade secrets have been accessed or taken.

5 With respect to the injunction of Ms. Polyakova, it
6 appears if counsel were to have a calm discussion without
7 loaded words on either side, that there is no apparent issue
8 concerning the probability of reaching language that will be
9 acceptable to both sides. So I will direct you to continue to
10 find some way to stipulate going forward with respect to that
11 as well. I mean, the points that Mr. Epner make seem to me to
12 make sense.

13 In terms of the likelihood that Ms. Polyakova has
14 access to information outside of her employment with -- prior
15 employment with SecurityScorecard, that ought not to be part of
16 an injunction. I don't see why folks can't come up with
17 language to address that. I don't think that there would be
18 any objection to defining such language on the part of
19 Mr. Taber; because if, in fact, her husband is also in the same
20 business and she receives information from him, it seems to me
21 as a general proposition, as a reasonable proposition, that
22 that ought not be covered by an injunction.

23 But, again, this is without prejudice, Mr. Taber, to
24 you coming back to me after having these discussions, providing
25 this additional information concerning the intrusions into

O6DVSECO

1 SecurityScorecard's databases.

2 And with that, I hope I have given you some clear
3 guidance as to what you need to discuss, and I will await to
4 hear from you.

5 Is there anything else that we should do this
6 afternoon?

7 MR. TABER: I don't think so, your Honor. I think
8 that covers the landscape.

9 THE COURT: Mr. Padro?

10 MR. PADRO: Nothing from our end.

11 THE COURT: Mr. Epner?

12 MR. EPNER: No your Honor.

13 THE COURT: Okay. This has been fun for me.

14 And we are adjourned, with many thanks to Madam Court
15 Reporter.

16 MR. TABER: Thank you, your Honor.

17 MR. PADRO: Thank you, your Honor.

18 MR. EPNER: Thank you, your Honor.

19 * * *